IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VALORIE GIVENS, as Mother and Next Friend of C.G., a MINOR	§	**CIVIL ACTION NO. 3:16-CV-91**
Plaintiff,	§	
	§	**DISABILITY ACCOMMODATIONS DISCRIMINATION COMPLAINT**
v.	§	
	§	**ECF**
SYDY INVESTMENTS, L.P. and YOUNGDALE, LLC,	§	
Defendants.	§	

COMPLAINT

INTRODUCTION

1. This action arises under Title III of the Americans with Disabilities Act,[1] the Texas Architectural Barrier Act,[2] and the Texas Human Resources Code.[3] Valorie Givens brings this action as Mother and Next Friend of C.G., a minor and her daughter, C.G. is an individual with a mobility impairment disability. She brings this civil rights claim against SYDY Investments, L.P. and Youngdale, LLC for owning and/or operating facilities that are not readily accessible to and usable by individuals with disabilities and for failing to comply with the TABA, thereby violating Plaintiff's rights under the THRC.

2. Ms. Givens seeks a permanent injunction to enjoin Defendants from engaging in these unlawful practices, seeks the removal of architectural barriers that discriminate against individuals with mobility impairment disabilities, and declaratory relief, along with damages for violations of civil rights, along with attorney's fees and the costs of litigation.

JURISDICTION

3. This Court has jurisdiction over the federal claims brought in this action under 28 U.S.C. §1331, 42 U.S.C. §3613, and 42 U.S.C. §12188 and supplemental jurisdiction over the state claims

[1] 42 U.S.C. § 12182 et seq., (the "ADA").

[2] Tex. Gov't Code Ch. 469 (previously, Texas Revised Civil Statutes, Article 9102 et seq.) (the "TABA").

[3] Tex. Hum. Res. Code § 121.001 et seq. (the "THRC").

under 28 U.S.C. §1367.

BACKGROUND

4. More than 16 years ago Congress determined that people with disabilities such as Plaintiff, was being discriminated against by entities such as Defendant. Specifically Congress found the following:

> a. some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
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> * * * *
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> e. individuals with disabilities continually encounter various forms of discrimination, including ... the discriminatory effects of architectural ... barriers [and] ... failure to make modifications to existing facilities ...;"[4]

5. As a result of these findings the Congress passed the Americans with Disabilities Act to remedy these injustices. And specifically:

> a. to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
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> b. to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;[5]

6. The Americans with Disability Act Accessibility Guidelines (the "ADAAG" or the "Standards")[6] were adopted by the Department of Justice as standards for accessible design to carry out the provisions of the ADA as directed by Congress.[7]

7. In an effort to prevent discrimination against persons with disabilities, Texas passed the Texas Architectural Barrier Act , stating, "This chapter is intended to further the policy of this state to encourage and promote the rehabilitation of persons with disabilities and to eliminate, to the extent possible, unnecessary barriers encountered by persons with disabilities whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly

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[4] 42 U.S.C. §12101(a).

[5] 42 U.S.C. §12101(b).

[6] 28 C.F.R. Part 36, Appendix A.

[7] 42 USC §12186(b).

restricted."[8]

8. The intent of the TABA was "...to ensure that each building and facility subject to this chapter is accessible to and functional for persons with disabilities..."[9]

9. The Texas Accessibility Standards[10] adopted under the TABA apply to "a privately funded building or facility that is defined as a "public accommodation" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, and that is constructed, renovated, or modified on or after January 1, 1992".[11]

PARTIES

10. Plaintiff, C.G. is an individual with a disability within the meaning of Title III of the ADA and the TABA, and a "Person with a disability" as defined by THRC, in that she has a physical impairment that substantially limits one or more of her major life activities. She is "disabled" because of cerebral palsy and uses a wheelchair for purposes of mobility.

11. C.G. is a minor and Valorie Givens is the mother and legal guardian of C.G.

12. Defendant SYDY Investments, L.P. ("SYDY") is listed by Secretary of State records as a domestic limited partnership. These same records show Young K Yoo as its registered agent at 14827 Bellbrook Dr, Dallas, TX 75254-7648, He may be served with process at that address.

13. Defendant Youngdale, LLC ("Youngdale") is listed by Secretary of State records as a domestic limited liability company and SYDY's general partner. These same records show Young K Yoo as its managing member at 14827 Bellbrook Dr, Dallas, TX 75254-7648, He may be served with process at that address.

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[8] Tex. Gov't Code §469.001(c).

[9] Tex. Gov't Code §469.001(a).

[10] 16 Tex. Amin. Code, § 68 (1994) Tex. Dept. Lic. & Reg. (the "TAS"). The TAS sections are exactly the same as the ADAAG sections cited herein and were copied verbatim from the ADAAG as applied to the architectural barriers described in this pleading.

[11] Tex. Gov't Code, Sec. 469.003(a)(4).

FACTS

14. SYDY owns and or operates a strip shopping center at 9147 Skillman Street, Dallas, Texas (the "Skillman Center").

15. Skillman Center is a public accommodation – a "shopping center, or other sales or rental establishment."[12]

16. Skillman Center houses FedEx Office ("FedEx"), Cancun Auto Insurance ("Cancun"), Queen's Beauty Supply ("Queen's"), ET's Tobacco Shop ("ET's"), and Title Max Title Loans ("Title Max"), all public accommodations.[13]

17. Skillman Center is a private entity within the meaning of the ADA.[14]

18. Skillman Center is a "a privately funded building or facility that is defined as a 'public accommodation' by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments."[15]

19. Skillman Center is subject to the requirements of Title III of the ADA and the TABA.

20. The last building permits were filed and the first certificates of occupancy for Skillman Center was issued before January 26, 1993. Thus, Skillman Center is defined as an "existing facility" under the ADA.[16]

21. Prior to instituting this suit, Ms. Givens, in the company of C.G., visited Skillman Center and encountered a variety of architectural barriers, including improperly placed and designated accessible parking and no accessible route to and into, and throughout the facility.

22. Skillman Center provides parking spaces for self-parking by employees or visitors, or both.

23. Skillman Center has designed and constructed designated accessible parking on or after

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[12] 42 USC §12181(7)(E).

[13] *Id.*

[14] 42 USC §12181(6).

[15] Tex. Gov't Code §469.003(a)(4).

[16] 28 CFR part 36.401.

January 1, 1993.

24. When Ms. Givens and C.G. visited Skillman Center, there was only one correctly designated accessible parking space marked with a sign, a correct access aisle, and a correct accessible route into the FedEx center at the south end of the facility.[17]

25. Given the total number of parking spaces provided is over 100, one is insufficient under the ADAAG and the facility needs at least five.[18]

26. The ADA and other Federal civil rights laws require that accessible features be maintained in working order so that they are accessible to and usable by those people they are intended to benefit.[19]

27. There is one additional designated accessible parking space in front of FedEx with a sign so faded as to unreadable and the parking space and access aisle faded as well.[20]

28. It appears that at one time there were two spaces designated as accessible with the international access symbol painted on the concrete. One is so faded as to be unreadable. Neither has signage designating the space as accessible.[21]

29. There is a ramp over the curb to Queen's Beauty Supply that fails to meet any accessability standard. It does not have a correct slope and either flared sides or edge protection.[22]

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[17]Exhibit A, photo 1.

[18]Exhibit B, *See* ADAAG/TAS §208.2 Minimum Number. Parking spaces complying with 502 shall be provided in accordance with Table 208.2 except as required by 208.2.1, 208.2.2, and 208.2.3.

[19]28 CFR §36.211(a) A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.

[20]Exhibit A, photo 2. ADAAG/TAS §502.3 Access Aisle. Access aisles serving parking spaces shall comply with 502.3. Access aisles shall adjoin an accessible route. ADAAG/TAS §502.3.1 Width. Access aisles serving car and van parking spaces shall be 60 inches (1525 mm) wide minimum.

[21]Exhibit A, Photos 3 and 4. ADAAG/TAS §502.6. Identification. Parking space identification signs shall include the International Symbol of Accessibility complying with 703.7.2.1. Signs identifying van parking spaces shall contain the designation "van accessible." Signs shall be 60 inches (1525 mm) minimum above the finish floor or ground surface measured to the bottom of the sign.

[22]Exhibit A, photo 5 and 6. ADAAG/TAS §406.1 General. Curb ramps on accessible routes shall comply with 406, 405.2 through 405.5, and 405.10.ADAAG/TAS §405.2 Slope. Ramp runs shall have a running slope not steeper than 1:12. ADAAG/TAS §406.3 Sides of Curb Ramps. Where provided, curb ramp flares shall not be steeper than 1:10. ADAAG/TAS §406.5 Location. Curb ramps and the flared sides of curb ramps shall be located so that they do not project into vehicular traffic lanes, parking spaces, or parking access aisles. ADAAG/TAS §405.9 Edge Protection. Edge protection complying with 405.9.1 or 405.9.2 shall be provided on each side of ramp runs and at each side of ramp landings.

30. There are ramps leading to Cancun Auto Insurance, Tobacco Shop, and Title Max Title Loans.

31. Each of these ramps have a rise greater than six inches.

32. It appears that at some time in the past, there was a handrail on the street side of the ramp leading to ET's Tobacco Shop. At the time Ms. Givens and C.G. visited the facility, that hand rail was completely missing.[23]

33. None have handrails on both sides of the ramp.[24]

34. None have Handrail gripping surfaces that extend horizontally for 12 inches beyond the bottom of the ramp runs.[25]

35. The hand rails on the ramp leading to Title Max Title Loans was so damaged as to be unsafe and unuseable.[26]

36. The Justice Department has set out the priorities for barrier removal. Specifically the Justice Department has determined as follows:

> (c) Priorities. A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.
>
> (1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces..[27]

37. Skillman Center, like all public accommodations, has been under the obligation to comply with the ADA and TABA since January 26, 1992. Since that time it has failed to remove barriers

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[23]Exhibit A, photo 7.

[24]Exhibit A, photos 8 and 9. ADAAG/TAS §405.8 Handrails. Ramp runs with a rise greater than 6 inches (150 mm) shall have handrails complying with 505. ADAAG/TAS §505.2 Where Required. Handrails shall be provided on both sides of stairs and ramps.

[25]*Id.* ADAAG/TAS §505.10.1 Top and Bottom Extension at Ramps. Ramp handrails shall extend horizontally above the landing for 12 inches (305 mm) minimum beyond the top and bottom of ramp runs. Extensions shall return to a wall, guard, or the landing surface, or shall be continuous to the handrail of an adjacent ramp run. *See* Figure 505.10.1.

[26]Exhibit A, photos 10 and 11.

[27]28 CFR §36.304(c).

from Skillman Center where that removal is readily achievable.

38. Since opening Skillman Center, SYDY Investments, L.P. has engaged in renovation of the premises and failed to remove the barriers from its facility which have been made the top priority under the law.[28]

39. On October 16, 2015 the undersigned attorney (the "undersigned") on behalf of Plaintiffs wrote to Young K Yoo detailing the Property's failure to comply with the ADA's parking and accessible route requirements, requesting that he have his attorney contact the undersigned to resolve these failures by agreeing to provide accessible parking and accessible routes to ADA standards by a date certain and pay minimal damages and attorneys' fees incurred to date.[29]

40. The undersigned was contacted by SYDY's attorney by letter dated November 23, 2015 stating, "Contrary to your assertions, our client believes that it is in full compliance with the ADA. Not only is there sufficient accessible parking, but appropriate ramps providing an access path of travel are available for all handicapped persons."[30]

41. SYDY's attorney further requested, "Please provide us with specific information related to your client's claims of a purported violation of the ADA at your earliest convenience."[31]

42. In response, on December 3, 2015, the undersigned sent a letter explaining the properties failures to comply with the ADA, together with photographs and a draft settlement agreement.[32]

43. There has been no response to the undersigned attorney's last letter to SYDY or its attorney.

44. Instead, SYDY has attempted to remediate the facility by reinstalling a hand rail on the ramp leading to ET's and repairing the handrail on the ramp leading to Title Max.[33]

45. Neither the ET's nor Title Max ramp has handrails on both sides of the ramp or 12 inch

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[28]*See* 28 CFR 35.151 New Construction and Alterations

[29]Attached as Exhibit C.

[30]Attached as Exhibit D.

[31]*Id.*

[32]Attached as Exhibit E.

[33]Exhibit A, photos 12, 13, and 14.

extensions at the bottom of the ramp.[34]

46. The handrail on the ramp to Cancun remains unchanged.

47. Despite the architectural barriers Ms. Givens and C.G. encountered, they would continue to use the facility if they were able to use the premises.

CAUSES OF ACTION
Count 1
ADA Title III Failure to Remove Where Readily Achievable

48. The ADA places an ongoing obligation on all public accommodations to remove architectural barriers from existing facilities if that removal is readily achievable.[35] SYDY Investments, L.P. discriminates against on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and/or accommodations at Skillman Center in that, it owns and or operates a public accommodation that does not afford to C.G. the full and equal use and or enjoyment of or access to the goods, services, facilities, privileges, advantages, and accommodations available to its able bodied patrons as required by law because each has failed to remove those barriers where the removal was readily achievable.

49. As a direct and proximate result of SYDY's and Youndale's denial of appropriate and dignified access into and use of Skillman Center, it has deprived Plaintiff of her civil liberties and thereby discriminated against her.

Count 2
Tex. Hum. Res. Code - Discrimination

50. TEX. HUM. RES. CODE § 121.003(a) provides that persons with a disability have the same right as the able-bodied to the full use and enjoyment of any public facility in the state.

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[34] *Id.*

[35] 42 USC 12182(b)(2)(A)(iv); 28 CFR Part 36.304(b).

51. Tex. Civ. Art 9102 §2(a)(4)[36] defines public facilities covered by the law as, "a privately funded building or facility defined as a "public accommodation" by Section 301(7) of the Americans with Disabilities Act of 1990 (42 U.S.C. §12181), and its subsequent amendments, that is constructed or renovated, modified, or altered on or after January 1, 1992."

52. Tex. Hum. Res. Code §121.003 (d)(1) specifically states that a failure to comply with Article 9102, Texas Civil Statutes is a form of discrimination in Texas. The architectural barriers identified in the "Facts" portion of this Complaint as violating the ADAAG are also prohibited under the TAS. Those barriers constitute violations of §121.003 (d)(1) of Tex. Hum. Res. Code.

53. SYDY and Youngdale have violated the TABA[37] by engaging in renovations at Skillman Center and failing to design and construct buildings and facilities on or after January 1, 1993 to the extent required by the Texas Accessibility Standards issued by the Texas Department of Licensing and Regulation.[38]

54. TEX. HUM. RES. CODE § 121.003(d)(1) specifically provides that failure to comply with the provisions of the TABA is discrimination and § 121.004(b) of the TEX. HUM. RES. CODE provides that any person that violates §121.003 is deemed to have deprived a person with a disability of his or her civil liberties. The person with a disability deprived of his or her civil liberties may maintain a cause of action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least $300.00 to the person with a disability.

55. As a direct and proximate result of SYDY's and Youngdale's violations of the TABA as set forth above, C.G. has been denied appropriate and dignified access into and use of Skillman Center and SYDY and Youngdale have violated her civil rights.

[36]On Sept.1, 2003 Art 9102 was changed to TEX. GOV'T CODE Chapter 469. The reference to Art 9102 in the THRC §121.003 has not been updated to reflect the change. The revisor's note, however, at the end of Chapter 469 makes it clear that statutory references to Art. 9102 now mean Chapter 469. Specifically "Sec. 8. All references in law to the former architectural barriers statute, Article 7, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), mean this article."

[37]Tex. Civ. Stat. Art. 9102 Sec. 2(a)(4).

[38]TEX. GOV'T CODE §469.052.

REQUEST FOR RELIEF

Plaintiff respectfully prays that the Court enter an order granting the following relief.

56. An order directing Defendants to remove the architectural barriers barring C.G. from the full and equal access to the facilities of Skillman Center enjoyed by those patrons who do not have a mobility impairment, and, for Defendant to make Skillman Center accessible to and usable by individuals with disabilities, consistent with the ADAAG and the Texas Accessibility Standards;

57. An entry of money judgment against the Defendant awarding C.G. damages for violation of her civil liberties and such further amount as may be shown by the evidence at trial.

58. An award to C.G. of all attorney's fees, including litigation expenses and costs; and

59. An award to C.G. for all other relief at law and in equity for which the Court deems appropriate.

Dated: January 12, 2016

Respectfully submitted,

s/Kenneth Carden

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Tel. 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
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